Sheryl P. Walter Declassified/Released US Department of State EO Systematic Review 20 Mar 2014

# Message Text

CONFIDENTIAL

PAGE 01 BONN 10571 01 OF 04 081754Z
ACTION L-03

INFO OCT-01 EUR-12 ISO-00 IO-13 SSO-00 /029 W
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FM AMEMBASSY BONN
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C O N F I D E N T I A L SECTION 01 OF 04 BONN 10571

E.O. 11652: GDS
TAGS: PGOV, US, GW
SUBJECT: YOUNG LOAN PROCEEDINGS

REF: (A) BONN 9796

FOR L - MR. HANSELL AND AMBASSADOR KEARNEY

SUMMARY: DURING A THREE-DAY MEETING IN GENEVA OF THE COUNSEL AND AGENTS OF THE APPLICANT STATES IN THE SUBJECT PROCEEDING, CONSIDERABLE COORDINATION WAS ACHIEVED IN PREPARATIO FOR THE ORAL PROCEEDINGS IN THE YOUNG LOAN CASE THAT ARE NOT LIKELY TO TAKE PLACE BEFORE 1979. THE CLEVER FRG REJOINDER, THE LAST WRITTEN SUBMISSION BY THE PARTIES, WAS DEEMED TO HAVE GIVEN THE GERMAN SIDE IN THE DISPUTE AN EQUAL CHANCE OF SUCCEEDING. THUS, THE NEED FOR THE APPLICANT STATES TO MAKE A EFFECTIVE PRESENTATION IN THE ORAL PROCEEDINGS HAS TAKEN ON PARTICULAR IMPORTANCE. THE REPRESENTATIVES PRESENT AGREED ON THE APPORTIONMENT OF EFFORTS TO FIND AND APPROACH POTENTIAL WITNESSES FOR THE PURPOSE OF DETERMINING THEIR POSSIBLE AVAILABILITY TO TESTIFY AND THE POTENTIAL VALUE OF THEIR TESTIMONY IN SUPPORTING THE APPLICANTS' POSITION. THERE WAS GENERAL AGREEMENT THAT THE APPOINTMENT OF GERMAN-SPEAKING ASSOCIATE COUNSEL, IN PARTICULAR TO PRESENT IN GERMAN TO THE COURT CERTAIN IMPORTANT LINGUISTIC ARGUMENTS, WAS DESIRABLE.
CONFIDENTIAL

CONFIDENTIAL

PAGE 02 BONN 10571 01 OF 04 081754Z

FINALLY, GENERAL AGREEMENT WAS ACHIEVED ON THE POSITIONS THAT THE APPLICANT STATE AGENTS AND REPRESENTATIVES SHOULD TAKE ON THE QUESTIONS RAISED BY THE KOBLENZ TRIBUNAL FOR DISCUSSION AT THE JUNE 16 MEETING. END SUMMARY

1. AT THE BEGINNING OF THE MEETING O APPLICANT STATES,

Sheryl P. Walter Declassified/Released US Department of State EO Systematic Review 20 Mar 2014

Sheryl P. Walter Declassified/Released US Department of State EO Systematic Review 20 Mar 2014

AGENTS AND COUNSEL IN GENEVA ON JUNE 2, A REPORT WAS GIVEN ON THE STATUS OF THE PROCEEDINGS BASED ON THE DELIBERATIONS OF COUNSEL ON MAY 31 AND JUNE 1. SINCE SUBMISSION OF THE FRG REJOINDER (THE FINAL WRITTEN PLEADING IN THIS PROCEEDING) THE CHANCES OF BOTH SIDES FOR SUCCEEDING HAVE BECOME APPROXIMATELY EQUAL. BEFORE THAT REJOINDER IT WAS BELIEVED THAT THE APPLICANTS' POSITION HAD BEEN BOTH BETTER ORGANIZED AND MORE EFFECTIVELY ARGUED. THE FRG REJOINDER PRESENTS AN INTELLIGENTLY WORKED OUT ARGUMENT THAT CLEVERLY CONFUSES A NUMBER OF ISSUES. WHILE IT HAS MANY WEAKNESSES, IT IS LIKELY TO HAVE A STRONG EFFECT ON THE TRIBUNAL AS IT IS THE LAST WRITTEN PLEADING. THE APPLICANTS HAVE A REASONABLY GOOD CHANCE OF WINNING IF THEY CAN INTRODUCE THE TESTIMONY OF WITNESSES TO DEMONSTRATE THE INACCURACY OF FACTS PRESENTED IN THE FRG REJOINDER AND ESTABLISH THAT THE ARGUMENTS DEVELOPED DO NOT SUPPORT THEIR CONCLUSIONS.

2. AS THE APPLICANTS' CURRENT COUNSEL AND THE WITNESSES UNDER CONSIDERATION TO SUPPORT THE APPLICANTS, CASE PARTICIPATED AT THE CONFERENCE ON THE LONDON DEBT AGREEMENT (LDA), THEY KNOW WHAT HAPPENED THERE AND THAT THE APPLICANTS' CASE IS BASED ON THE CORRECT FACTS. THUS, THE HANDLING OF THE ORAL PRESENTATION WILL BE MOST IMPORTANT BOTH FOR THE PURPOSE OF PUTTING FOR-
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WARD CORRECT FACTS BY MEANS OF THE TESTIMONY OF WITNESSES, AND MAKING EFFECTIVE USE OF THOSE FACTS IN AN ORGANIZED LEGAL PRESENTATION. IT WAS RECOGNIZED THAT THE APPLICANTS HAVE A CERTAIN ADVANTAGE BY REASON OF THE FACT THAT THEY HAVE NOT SO FAR PRESENTED EVIDENCE THAT IS OPEN TO CONTRADICTION AS HAS THE FRG IN ITS REJOINDER.

3. THE APPLICANTS ARE AWARE THAT THE FRG HAS OBTAINED THE SERVICES OF A FORMIDABLE NEW COUNSEL IN THE PERSON OF F. A. MANN, A UK NATIONAL OF GERMAN ORIGIN WHO IS A RECOGNIZED EXPERT IN INTERNATIONAL MONETARY MATTERS AND COMMANDS THE THREE OFFICIAL LANGUAGES OF THE TRIBUNAL.

4. IT WAS RECOGNIZED THAT THE APPLICANTS MUST SHAKE THE GERMAN ARGUMENT THAT THE TERM "ABWERTUNG" HAS ONLY THE ONE MEANING ATTRIBUTED TO IT BY THE GERMAN SIDE. TO DO THIS EFFECTIVELY, THE APPLICANTS NEED

Sheryl P. Walter Declassified/Released US Department of State EO Systematic Review 20 Mar 2014

Sheryl P. Walter Declassified/Released US Department of State EO Systematic Review 20 Mar 2014

CONFIDENTIAL

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CONFIDENTIAL

PAGE 01 BONN 10571 02 OF 04 081755Z
ACTION L-03

INFO OCT-01 EUR-12 ISO-00 SSO-00 IO-13 /029 W
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O 081733Z JUN 78
FM AMEMBASSY BONN
TO SECSTATE WASHDC IMMEDIATE 9224

C O N F I D E N T I A L SECTION 02 OF 04 BONN 10571

EXPERT DIRECTION FROM AN ASSOCIATE COUNSEL WHO IS AT LEAST BILINGUAL (ENGLISH/GERMAN), FOR DEVELOPMENT OF TESTIMONY AND EFFECTIVE ARGUMENTATION ON THE LINGUISTIC ASPECTS OF THE RELATIONSHIP OF THE THREE LANGUAGE (ENGLISH/FRENCH/GERMAN) TEXTS, IN PARTICULAR CONCERNING THE WORDS "ABWERTUNG," "DEVALUATION," AND "DEPRECIATION." IT WOULD BE DESIRABLE FOR THE APPLICANTS' ARGUMENTS ON THIS ASPECT OF THE CASE TO BE PRESENTED TO THE TRIBUNAL IN GERMAN, IN PARTICULAR FOR THE BENEFIT OF THE TRIBUNAL'S GERMAN JUDGES, RATHER THAN VIA INTERPRETERS THROUGH WHOM THE ARGUMENTS OF THE APPLICANT STATES ARE LIKELY TO BECOME DISTORTED AND POSSIBLY MEANINGLESS TO THE GERMAN JUDGES. IT WAS AGREED THAT THE RULES PERMITTED THE APPOINTMENT OF FURTHER COUNSEL AT ANY TIME.

5. THE APPLICANTS NEED TO ARGUE THE LINGUISTIC QUESTION AT LEAST TO DEMONSTRATE THAT THERE IS A BONA FIDE DISAGREEMENT ON THE MEANING AND RELATIONSHIP OF THESE TERMS, AND THAT THE STATEMENTS IN THE FRG REJOINDER OF HERMANN ABS, THE TITULAR HEAD OF THE FRG DELEGATION AT THE LDA CONFERENCE, CONCERNING WHAT OCCURRED AT THE CONFERENCE, ARE QUESTIONABLE AND OF DUBIOUS RELIABILITY (PROBABLY IN FACT REPRESENTING THE VIEWS URGED UPON HIM BY THE FEDERAL MINISTRY OF FINANCE WITH
CONFIDENTIAL

CONFIDENTIAL

PAGE 02 BONN 10571 02 OF 04 081755Z

RESPECT TO THIS CASE). THE CROSS-EXAMINATION OF

Sheryl P. Walter Declassified/Released US Department of State EO Systematic Review 20 Mar 2014

Sheryl P. Walter Declassified/Released US Department of State EO Systematic Review 20 Mar 2014

HERR ABS WILL BE IMPORTANT TO THE CREDIBILITY ACCORDED BY THE TRIBUNAL TO HIS CLAIMED RECOLLECTION AND KNOWLEDGE OF WHAT TRANSPIRED IN LONDON IN 1952.

6. AMBASSADOR KEARNEY OF THE OFFICE OF THE LEGAL ADVISER, WHO WAS PRESENT IN GENEVA DURING THE MEETINGS ON MAY 31-JUNE 2, HAS COMPLETE KNOWLEDGE OF THE VARIOUS WITNESSES UNDER CONSIDERATION BY THE APPLICANT STATES AND THEIR POTENTIAL SIGNIFICANCE FOR THE ARGUMENTS TO BE MADE BY THE APPLICANTS.

7. ONCE THE APPLICANTS HAVE IDENTIFIED ALL THE DESIRABLE WITNESSES, THEY WILL DETERMINE WHICH OF THOSE WITNESSES ARE WILLING AND ABLE TO TESTIFY IN KOBLENZ AND TO WHAT EXTENT THEIR TESTIMONY WOULD BE FAVORABLE TO THE ARGUMENTS OF THE APPLICANT STATES AND WOULD SURVIVE CROSS-EXAMINATION. IT WAS RECOGNIZED THAT WHILE CROSS-EXAMINATION OF WITNESSES WAS IMPORTANT TO THE APPLICANTS, IT COULD ALSO HAVE DISADVANTAGES. HOWEVER, THE RISK WAS GENERALLY DEEMED ACCEPTABLE IF THE APPLICANTS LIMIT THEMSELVES TO RELATIVELY FEW AND HIGHLY EFFECTIVE WITNESSES FOR THEIR CASE. THE WITNESSES WOULD BE FOR ONE OF TWO PURPOSES:

(A) TO ESTABLISH FACTS FAVORING THE ARGUMENTS OF THE APPLICANTS AND TO CONTRADICT OR PUT INTO DOUBT NEW FACTS PRESENTED IN THE FRG REJOINDER; OR

(B) TO PROVIDE EXPERT OPINIONS AND LEGAL CON-
CONFIDENTIAL

CONFIDENTIAL

PAGE 03 BONN 10571 02 OF 04 081755Z

CLUSIONS BASED ON THE FACTS AS VIEWED BY APPLICANTS

THE VIEW WAS EXPRESSED THAT THE EXPERT WITNESSES MIGHT COMMENCE THEIR PRESENTATION BY READING A CAREFULLY PREPARED WRITTEN STATEMENT.

8. THE LEGAL REPRESENTATIVE FOR THE SWISS FOREIGN OFFICE WAS ASKED TO EXAMINE THE AVAILABLE PERSONAL FILES OF AMBASSADOR STUCKI, THE HEAD OF THE SWISS DELEGATION TO THE LDA CONFERENCE, IN PARTICULAR FOR PERSONAL OR INTERNAL RECORDS OF WHAT TRANSPIRED BETWEEN JULY 25 AND AUGUST 8, 1952 THAT MIGHT CORROBOR-ATE INTERNAL MEMORANDA MAINTAINED BY THE U.S. DELEGATION TO THE CONFERENCE THAT ARE THE ONLY SUCH DOCUMENTS AVAILABLE AT PRESENT.

Sheryl P. Walter Declassified/Released US Department of State EO Systematic Review 20 Mar 2014

Sheryl P. Walter Declassified/Released US Department of State EO Systematic Review 20 Mar 2014

9. CONCERNING PRESENTATION OF THE APPLICANTS' CASE,
IT WAS AGREED THAT THEY WOULD PROCEED GENERALLY AS
HITHERTO I.E. WHILE EACH APPLICANT STATE WOULD MAINTAIN
ITS LEGAL INDEPENDENCE OF THE OTHERS AND
THERE WOULD THUS BE NO FORMAL COMBINATION OF THE ARGU-
MENTS AS FAR AS THE TRIBUNAL IS CONCERNED, THERE WOULD,
IN PRACTICE, BE A COORDINATED PRESENTATION BY THEIR
INDIVIDUAL COUNSEL/AGENTS, WHO WOULD THEN BE
ACKNOWLEDGED BY THE COUNSEL/AGENTS REPRESENTING THE

CONFIDENTIAL

NNN

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PAGE 01 BONN 10571 03 OF 04 081756Z
ACTION L-03

INFO OCT-01 EUR-12 ISO-00 SSO-00 IO-13 /029 W
----------118295 081850Z /46
O 081733Z JUN 78
FM AMEMBASSY BONN
TO SECSTATE WASHDC IMMEDIATE 9225

C O N F I D E N T I A L SECTION 03 OF 04 BONN 10571

OTHER APPLICANT STATES TO BE REFLECTING THE VIEWS ALSO
OF THEIR CLIENT COUNTRY. THIS FORM OF ORGANIZATION
WOULD BE CHARACTERIZED BY THE APPLICANT STATES TO THE
TRIBUNAL AS AN ATTEMPT TO SIMPLIFY THE PRESENTATION AND
AVOID REPETITION FOR THE BENEFIT OF THE TRIBUNAL. IT
WOULD THUS REMAIN A MATTER FOR THE APPLICANT
STATES TO MAINTAIN AND NOT SOMETHING THE TRIBUNAL
HAS A RIGHT OF ITS OWN TO EXPECT.

10. IT WAS RECOGNIZED WITH SOME INITIAL RELUCTANCE
THAT AS THE FIVE GOVERNMENTS WOULD THUS STILL HAVE
FIVE SEPARATE CASES PENDING AGAINST THE FRG, IT WOULD
BE NECESSARY FOR THEM ALL TO HAVE EITHER THEIR
AGENTS OR THEIR COUNSEL AVAILABLE AT ALL TIMES DURING
THE ORAL PROCEEDINGS. THE ESSENTIAL SIMULTANEOUS
TRANSLATIONS OF TRIBUNAL QUESTIONS TO COUNSEL, AGENTS,
EXPERTS OR WITNESSES WOULD MAKE IT ESSENTIAL FOR
AGENTS/COUNSEL TO BE AVAILABLE FOR POSSIBLE IMMEDIATE

Sheryl P. Walter Declassified/Released US Department of State EO Systematic Review 20 Mar 2014

Sheryl P. Walter Declassified/Released US Department of State EO Systematic Review 20 Mar 2014

CONSULTATIONS.

11. THE FOLLOWING REPRESENTS THE AGREED POSITION TO BE TAKEN BY THE REPRESENTATIVES OF THE APPLICANT STATES AT THE JUNE 16 MEETING WITH THE TRIBUNAL. THE PARA-GRAPHS ARE GEARED TO THE NUMBERED PARAGRAPHS OF THE HUSEL LETTER AS CONTAINED REFTEL:
CONFIDENTIAL

CONFIDENTIAL

PAGE 02 BONN 10571 03 OF 04 081756Z

(1-2) CONCERNING THE DATE AND DURATION OF THE ORAL PROCEEDINGS IT WAS DEEMED VIRTUALLY UNAVOIDABLE THAT THE HEARINGS TAKE PLACE AFTER 1978. THE TRIBUNAL ITSELF SEEMED TO BE THINKING OF 1979 (SEE ITEM 5 OF HUSEL LETTER). THE TRIBUNAL ON THE BASIS OF A DECISION OF ITS KURATORIUM IN OCTOBER 1977, HAD FOR REASONS OF ECONOMY RELEASED TRANSLATORS OTHERWISE AVAILABLE FOR THE PROCEEDINGS. IT WAS CLEAR THAT THE APPLICANT STATES COULD NOT ACCEPT THAT THEIR WISHES CONCERNING PROCEDURES DURING THE ORAL PROCEEDINGS SHOULD BE LIMITED BY THE NON-AVAILABILITY OF INTERPRETERS. ONLY SIMULTANEOUS INTERPRETATION INTO THE TWO OTHER OFFICIAL LANGUAGES WOULD AVOID THE BOREDOM AND DELAY FOR ALL THAT WOULD BE CAUSED BY CONSECUTIVE TRANSLATIONS.

IN ORDER FOR THE APPLICANT STATES TO AVOID THEMSELVES BEING IN THE POSITION OF A DEMANDEUR CONCERNING POSSIBLE SHIFT OF THE ORAL PROCEEDINGS FROM KOBLENZ TO BONN (WHERE EMBASSIES HAVE SUPPORTING STAFF AND FACILITIES) THEY SHOULD TAKE THE INITIAL POSITION THAT IF THE TRI-BUNAL WAS NOT PROPERLY EQUIPPED OR STAFFED TO HANDLE SIMULTANEOUS TRANSLATIONS, IT SHOULD MAKE EVERY EFFORT TO BECOME SO QUICKLY.

IF THE TRIBUNAL SHOULD NOT BE ABLE PROPERLY TO EQUIP AND STAFF ITSELF TO HANDLE SIMULTANEOUS TRANSLATION IN KOBLENZ DURING THE ORAL PROCEEDINGS, IT SHOULD BE THE TRIBUNAL THAT WOULD ASK WHETHER THE ORAL PROCEEDINGS MIGHT BE HELD AT SOME OTHER LOCATION THAN KOBLENZ. THE REPRESENTATIVES OF THE APPLICANT STATES ON THE TRIBUNAL'S KURATORIUM WOULD
CONFIDENTIAL

CONFIDENTIAL

PAGE 03 BONN 10571 03 OF 04 081756Z

BE INSTRUCTED TO ENSURE THAT THE TRIBUNAL HAS AUTHORITY TO INCUR THE COSTS FOR ADEQUATE SIMULTANEOUS TRANSLATION

Sheryl P. Walter Declassified/Released US Department of State EO Systematic Review 20 Mar 2014

Sheryl P. Walter Declassified/Released US Department of State EO Systematic Review 20 Mar 2014

SERVICES, WHETHER IN KOBLENZ OR ELSEWHERE.

THE TIMING OF THE ORAL PROCEEDINGS WOULD NEED TO TAKE INTO ACCOUNT THE AVAILABILITY OF THE UK, US AND GERMAN JUDGES AND THE PRESIDENT OF THE TRIBUNAL, IN VIEW OF THEIR OTHER RESPONSIBILITIES. THE APPLICANT STATES COULD NOT LIMIT THEMSELVES IN TERMS OF DURATION OF THE ORAL PROCEEDINGS. A PLAN FOR A THREE-WEEK SESSION MIGHT BE ADEQUATE BUT A BREAK MIGHT WELL BE NECESSARY BECAUSE OF OTHER COMMITMENTS BY THE JUDGES, AGENTS AND COUNSEL.

(3) IT WAS GENERALLY BELIEVED THAT IT WAS MOST DESIRABLE FOR ORAL PLEADINGS TO BE LIMITED TO A MORNING SESSION ON EACH DAY THAT WOULD PERMIT COUNSEL AND AGENTS TO CONSULT AND COORDINATE IN THE AFTERNOON ON THEIR PRESENTATIONS FOR THE NEXT DAY.

(4) IT WAS AGREED THAT INTERPRETATION INTO ALL THREE OFFICIAL LANGUAGES OF THE TRIBUNAL WOULD BE NECESSARY TO PERMIT EACH AGENT, COUNSEL AND WITNESS TO SPEAK IN HIS NATIVE LANGUAGE.

(5) IN LIGHT OF THE ESSENTIAL NATURE OF SIMULTANEOUS

CONFIDENTIAL

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CONFIDENTIAL

PAGE 01 BONN 10571 04 OF 04 081757Z
ACTION L-03

INFO OCT-01 EUR-12 ISO-00 SSO-00 IO-13 /029 W
----------118348 081853Z /46
O 081733Z JUN 78
FM AMEMBASSY BONN
TO SECSTATE WASHDC IMMEDIATE 9226

C O N F I D E N T I A L SECTION 04 OF 04 BONN 10571

TRANSLATIONS AS INDICATED ABOVE, IT WAS AGREED THAT THE REPRESENTATIVES OF THE APPLICANT STATES WOULD ENCOURAGE THE REGISTRAR TO CORRESPOND WITH HIS COUNTERPARTS AT THE INTERNATIONAL COURT OF JUSTICE, ON THE UK/

Sheryl P. Walter Declassified/Released US Department of State EO Systematic Review 20 Mar 2014

Sheryl P. Walter Declassified/Released US Department of State EO Systematic Review 20 Mar 2014

FRENCH ARBITRATION COURT, THE PRINCIPLE INTERPRETERS AT GENEVA, AND ELSEWHERE TO OBTAIN THE REQUISITE STAFF AND EQUIPMENT TO HANDLE SIMULTANEOUS INTERPRETATION DURING THE ORAL PROCEEDINGS.

(6) WITH RESPECT TO THE EXAMINATION OF WITNESSES AND EXPERTS, THE APPLICANTS' REPRESENTATIVES WOULD STATE ON JUNE 16 THAT THE NATURE OF THE CASE, AS IT HAS EMERGED FROM THE WRITTEN PLEADINGS, MAKES SUCH WITNESSES NECESSARY. HOWEVER, THE APPLICANT STATES CAN GIVE NO INDICATION AT PRESENT OF THE NUMBER OF THE WITNESSES OR THE PARTICULAR SUBJECTS TO WHICH THEY WOULD ADDRESS THEIR TESTIMONY. IF THE TRIBUNAL PRESSES FOR THE NUMBER OF WITNESSES AND THE LENGTH OF THEIR TESTIMONY IT WOULD BE WISER TO ERR ON THE SIDE OF MORE WITNESSES AND LONGER TESTIMONY RATHER THAN OTHERWISE. THE REPRESENTATIVES OF THE APPLICANT STATES WOULD SEEK TO DISCUSS IN A GENERAL WAY WITH THE TRIBUNAL HOW TESTIMONY WOULD BE INTRODUCED, THE POSSIBLE DESIRABILITY OF WRITTEN STATEMENTS OF EXPERT WITNESSES TO BE SUBMITTED TO THE TRIBUNAL IN ADVANCE, AND THE AVAILABILITY

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OF WITNESSES FOR QUESTIONS, INCLUDING CROSS-EXAMINATION. REPS WOULD SEEK TO CLARIFY ON JUNE 16 WHETHER THE TRIBUNAL WOULD EXPECT THAT ALL WITNESSES BE PRESENT IN ORDER TO ACCEPT THE SUBMISSION OF THEIR TESTIMONY. WHILE THE OPINION WAS EXPRESSED THAT THE TRIBUNAL WOULD NOT TURN DOWN EXPERT TESTIMONY MERELY IF THE WITNESS IS NOT PRESENT, THE OPPOSING VIEW WAS EXPRESSED THAT ALL WITNESSES SHOULD BE AVAILABLE IN PERSON.

(7) THE PROPOSAL WOULD BE AIRED THAT THE ORAL PROCEEDINGS BE DIVIDED INTO TWO PARTS WITH AN INTERVAL. DURING THE FIRST PART EACH SIDE WOULD PRESENT OPENING STATEMENTS AND THE TESTIMONY OF ITS WITNESSES, SUBJECT TO QUESTION AND CROSS-EXAMINATION. THERE WOULD THEN BE A TWO TO THREE WEEK INTERVAL TO PERMIT AGENTS AND COUNSEL TO PURSUE THEIR OTHER RESPONSIBILITIES AND ORGANIZE THEIR FINAL ARGUMENTS, TAKING INTO ACCOUNT THE FOREGOING STATEMENTS AND TESTIMONY OF BOTH SIDES.

WITH RESPECT TO THE QUESTIONS ON THE TRIBUNALS' RULES OF PROCEDURE RAISED IN THE MEMORANDUM CIRCULATED BY M. DELMAS, AND ON OTHER OPEN MATTERS, THERE WOULD BE A MEETING AT THE AMERICAN EMBASSY AT BONN ON JUNE 15 BETWEEN 1500 AND 1700 HOURS FOR LAST MINUTE COORDINATION IN PREPARATION FOR THE MEETING IN KOBLENZ WITH THE TRIBUNAL THE FOLLOWING DAY.

Sheryl P. Walter Declassified/Released US Department of State EO Systematic Review 20 Mar 2014

Sheryl P. Walter Declassified/Released US Department of State EO Systematic Review 20 Mar 2014

(8) IT WOULD BE ESSENTIAL THAT EACH APPLICANT STATE HAVE AVAILABLE TO IT A SEPARATE ROOM AS HOME BASE FOR ITS AGENT, COUNSEL AND SUPPORTIVE SECRETARIAL AND OTHER STAFF, AND THAT THE APPLICANT STATES HAVE AVAILABLE TO THEM A CONFERENCE ROOM CAPABLE OF ACCOMMODATING BETWEEN
CONFIDENTIAL

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12 AND 20 PERSONS AS WELL AS DOCUMENTS AND REFERENCE BOOKS. IT WOULD BE EMPHASIZED THAT THE ABOVE FACILITIES AVAILABLE TO THE APPLICANT STATES SHOULD BE AS SEPARATE AND FAR-REMOVED AS POSSIBLE FROM THE CORRESPONDING FACILITIES MADE AVAILABLE TO THE FRG SIDE.

12. ACTION REQUESTED: EMBASSY WOULD APPRECIATE, IN TIME FOR USE AT THE JUNE 15 COORDINATING MEETING IN BONN OF APPLICANT STATES' COUNSEL/AGENTS (I.E. WASHINGTON C.O.B. JUNE 14), ANY GUIDANCE THE DEPARTMENT MAY HAVE ON THE QUESTIONS CONTAINED IN THE HUSEL LETTER (REFTEL) AND THE POSITION THEREON SUMMARIZED ABOVE, AND ANY NECESSARY GUIDANCE ON THE ASPECTS OF THE TRIBUNAL'S RULES OF PROCEDURE RAISED IN THE DELMAS MEMORANDUM.
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CONFIDENTIAL

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Sheryl P. Walter Declassified/Released US Department of State EO Systematic Review 20 Mar 2014

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Sheryl P. Walter
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EO Systematic Review
20 Mar 2014
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